

REMARKS

I. Status of the Claims

At the time of the Action, Claims 1-3 and 5-14 were pending. New Claim 34, which incorporates the subject matter of original Claim 7, has been added above. The drawings are objected to under 37 CFR 1.83(a), and all pending claims stand rejected under Section 112, second paragraph and Section 103(a). The objections and rejections are addressed below.

II. The Drawing Objections

The Action states that the drawings are objected to for their failure to show a "deck fabric sheet attached to the underside of the backrest/deck portion." However, this term no longer appears in the claims (it was deleted from Claim 8 in Applicants' paper dated March 14, 2005). Thus, Applicants submit that this objection is moot, and request that it be withdrawn.

III. The Rejection under Section 112, Second Paragraph

The Action states that the claims recite "a deck fabric sheet" and that "it is understood that the deck fabric sheet is disclosed as the deck panel 84 of the upholstery piece." The Action requests that the terminology of the claims be consistent with that of the disclosure. The claims have been amended hereinabove to conform with this request.

IV. The Rejections under Section 103(a)

Claims 1-3 and 6 stand rejected under Section 103(a) based on U.S. Patent No. 5,626,388 to Haltner (Haltner) in view of U.S. Patent No. 5,320,407 to Tell (Tell) and U.S. Patent No. 5,681,090 to St. Thomas (St. Thomas). Claims 1, 2, 4-6 and 8 stand rejected under Section 103(a) based on St. Thomas in view of Tell. Claim 7 stands rejected under Section 103(a) based on St. Thomas in view of Tell and further in view of U.S. Patent No. 3,589,770 to Kelley (Kelley). Claims 9 and 10 stand rejected under Section 103(a) based on St. Thomas in view of Tell and further in view of U.S. Patent No. 3,695,690 to Carson (Carson) and U.S. Patent No. 6,293,624 to Gaylord et al. (Gaylord). Claims 11, 12 and 14 stand rejected under Section 103(a)

based on (a) Carson in view of U.S. Patent No. 3,179,469 to Heuston (Heuston) or (b) U.S. Patent No. 5,826,939 to Beyer (Beyer) in view of Heuston. Claim 13 stands rejected under Section 103(a) based on Beyer in view of Heuston and further in view of Gaylord. These rejections are addressed below.

A. Rejection of Claim 1 based on Haltner, Tell and St. Thomas

The Action characterizes Haltner as disclosing generally the components of a sofa, and states that "Haltner teaches of a furniture cover that covers the deck and backrest portions [of the sofa frame] and underlies the bottom section of the deck portion." The Action concedes that Haltner fails to disclose "a leather cover or a cover made from different materials." The Action cites Tell as disclosing an adjustable furniture slipcover that is preferably made of 100 percent cotton, but "alternatively different panels could be made of different materials or contain inserts of different materials." The Action concludes that it would have been obvious to the ordinarily skilled artisan "to modify the material of Haltner with a leather cover and a dust cover portion from of a different material, as generally taught by Tell, for providing protection to the upholstery cover in a variety of different locations."

In response, Applicants note that there simply is no suggestion in Haltner of using multiple materials in a sofa cover. Instead, Haltner discloses only a sofa in which the frame is covered with a stretchable tubular fabric sidewall, with the stretchable fabric conforming to the shape of the furniture. Given its tubular, open-ended shape, it is clear that the only way that the Haltner cover can be "conformable" as described in Haltner is to employ a stretchable fabric. Nothing in Haltner suggests using multiple fabric types. Applicants submit that, because Haltner stresses the conformability of its cover, it discourages the use of multiple fabric types, because any additional fabrics would also have to be conformable. Moreover, Haltner teaches away from the claimed invention in that the slip cover disclosed therein is to fit "a wide variety of styles and shapes" of furniture; thus, the employment of different fabrics for different portions of the slip cover would reduce the likelihood that the slip cover would be suitable for multiple sofa configurations.

Tell discloses a slip cover that, as illustrated therein, can be employed with a chair or sofa. Tell states that its slip cover is:

particularly useful as a relatively inexpensive way to temporarily cover a sofa, chair or sectional with a fabric to protect a valuable, unmarred item of furniture from temporary threats, such as visiting children or pets. It also provides a relatively inexpensive way to cover an unsightly piece of furniture.

Tell at column 2, lines 55-60. Thus, the purpose of the Tell slipcover is to protect or improve the appearance of the underlying furniture. In none of the slip covers disclosed in Tell was does any portion of the slip cover underlie the deck section of the sofa or chair, nor would there be any expectation of it covering the underside of the furniture given its stated purpose. There is simply no disclosure or suggestion in Tell of using a panel of a different material as part of an integrated upholstery piece that covers the entirety of a sofa (including the underside of the deck section, as is now recited in amended Claim 1), and in particular using a different material for the dust cover portion of the upholstery.

St. Thomas is cited in the Action for the disclosure of a zipper. Inasmuch as Claim 1 does not recite a zipper, as cited in the Action St. Thomas does not overcome the above-stated deficiencies of Tell and Haltner.

In view of the foregoing, Applicants submit that the Action fails to make a proper *prima facie* rejection under Section 103(a). No reference discloses or suggests an integrated upholstery piece with a dust cover portion formed of a different material than the front panel portion. Moreover, there is no motivation to combine Tell and Haltner, as (a) the purpose of Haltner (i.e., to provide a conformable sofa cover that is easily slipped over one end of the sofa upholstery) would be defeated by the introduction of a dust cover portion formed of a different material, and (b) Tell's stated purpose of improving and protecting the appearance of the furniture residing underneath the slip cover would not suggest the use of a different material for a dust cover portion underlying the deck of the sofa frame. Consequently, Applicants respectfully request

that the rejections of Claims 1-3 and 6 under Section 103(a) based on Haltner in view of Tell and St. Thomas be withdrawn.

B. Rejection of Claim 1 based on St. Thomas and Tell

The Action rejects Claims 1, 2, 4-6 and 8 under Section 103(a) based on St. Thomas in view of Tell. More specifically, the Action cites St. Thomas as disclosing an integrated upholstery piece 16 that covers the backrest section of a sofa and underlies the bottom portion of the deck section. St. Thomas also includes a zipper that allows the cover fabric to be removed for cleaning. St. Thomas fails to teach an upholstery cover of multiple materials. As described above, Tell is cited for the disclosure of a furniture slipcover that can include panels formed of multiple materials. As such, the Action concludes that Claim 1 is obvious under Section 103.

Applicants respectfully submit that St. Thomas is no more relevant to the subject matter of Claim 1 than is Haltner, *supra*. St. Thomas is directed to modular furniture formed from blocks of polystyrene covered with a cover fabric. The Action concedes that St. Thomas fails to disclose a cover formed of different materials; clearly St. Thomas fails to disclose a cover having a front panel portion formed of one material and a dust cover portion that underlies the deck section of the frame formed of another material. As discussed above, Tell discloses a typical fabric slipcover, and in no manner suggests the use of a dust cover portion in an integrated upholstery piece that is formed of a different material than the front panel portion. Accordingly, Applicants respectfully submit that the references fail to support a *prime facie* finding of obviousness under Section 103(a), and that the ordinarily skilled artisan would have been disinclined to combine the teachings of these references. As such, Applicants request that the rejections of Claims 1, 2, 4-6 and 8 under Section 103(a) based on St. Thomas in view of Tell be withdrawn.

C. Rejections of Claim 11 Based on Carson in view of Heuston

The Action rejects Claim 11 based on Carson in view of Heuston. Carson is characterized as disclosing a deck fabric sheet and a slat attached to the deck fabric sheet

received in the front slot of the deck section of the sofa. Heuston is characterized as disclosing a deck section of a furniture support having a front and rear slot or groove that receives slats therein. Based on these characterizations, the Action concludes that Claim 11 is obvious under Section 103(a).

Applicants note that the Carson sofa includes a tongue **86** that fits within a "rabbet" **87** located in the front portion of the frame of the sofa. The tongue **86** is attached to an elongated member **84** that extends along the front edge of the sofa frame. A skirt **95** depends from the elongated member **84** and resides forwardly of the front panel of the sofa frame. A fastening strip **96** on the rear side of the skirt **95** mates with another strip **97**, thereby pulling the upper portion of the skirt **95** taut between the strips **96**, **97** and the tongue **86**. The Action characterizes the elongated member **84** and its overlying upholstery **91** as meeting the recitation of the "upholstery piece" of Claim 11.

Heuston is directed to an elastomeric support platform **22** for a chair or sofa that underlies cushions that loosely rest thereon. The platform **22** is attached to the outer frame of the chair via a series of angled hooks **26** that fit within grooves **12** in the frame **10**; this arrangement can assist in keeping the platform **22** taut. No upholstery is attached to the platform **22**.

Applicants respectfully direct the Examiner's attention to Claim 11, which recites, *inter alia*,

- a frame having a generally horizontal deck section, the deck section including a top portion, the frame also having a generally upright backrest section attached to and extending upwardly from the deck section, the deck section top portion having front and rear laterally-extending slots;
- a fabric deck panel; and
- a pair of slats attached to the deck panel, the slats being received in the front and rear slots of the deck section top portion;

further comprising an upholstery piece that covers the backrest and deck sections of the frame, and wherein the deck panel is attached to the upholstery piece.

Neither Carson nor Heuston discloses an upholstery piece that covers the backrest and deck sections of the sofa frame. As such, neither reference discloses this element of Claim 11.

Moreover, Heuston clearly does not contemplate the attachment of upholstery to the platform **22**, as the platform **22** is intended for use with loose cushions. Neither reference suggests both a deck fabric sheet and upholstery attached thereto, wherein the deck fabric sheet can assist in aligning and mounting the upholstery and provide support to a seated occupant.

Inasmuch as the cited references fail to disclose a claim element, teach away from the combination of the references, and fail to suggest a performance advantage that can be achieved with the recited subject matter, Applicants respectfully submit that it would not have been obvious to the ordinarily skilled artisan to conceive the subject matter recited in Claim 1. Accordingly, Applicants request that the rejection based on Carson and Heuston be withdrawn.

D. Rejections Based on Beyere in view of Heuston

Beyer discloses a sofa configuration that is somewhat similar to that of Carson: namely, a trim cover **46** that overlies the front panel of a seat is attached to the frame via (a) a "J-retainer" **52** that engages the lower edge of the front panel and (b) portions of fabric from a material seam that reside in a channel **22** (it is unclear how the material seam is retained in the channel **22**). Nevertheless, Beyer discloses nothing more relevant to the cited subject matter than does Carson, *supra*, and therefore fails to overcome the deficiencies of Carson. As such, Applicants respectfully submit that this rejection should also be withdrawn.

V. New Claim 34

New Claim 34, which includes the subject matter of original Claim 7, has been submitted above for entry and examination. Claim 34 recites, *inter alia*, that the upholstery piece includes lateral panels that overlie lateral surfaces of the frame, and wherein the lateral panels include windows that permit access to recesses in the lateral surfaces. The Action rejected Claim 7 based on St. Thomas in view of Tell and further in view of U.S. Patent No. 3,589,770 to Kelley (Kelley). The Action characterizes Kelley as disclosing "'furniture with changeable covers' comprising a frame with recesses **32** in the lateral surfaces of the frame," and a slipcover **12** that "includes windows **50** that overlie and allow access to the recesses **32** on the lateral surfaces."

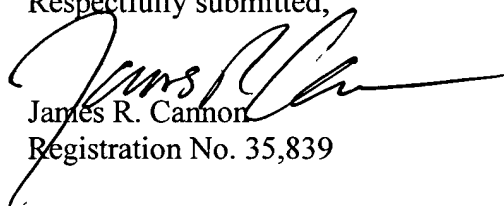
Serial No. 10/726,820
Filed December 2, 2003
Page 11 of 11

However, the "windows" and "recesses" of Kelley are located on the front surface of the sofa, not the lateral surfaces as recited in original Claim 7 (i.e., new Claim 34). As such, Applicants submit that the combination of cited references does not meet the elements of this claim, and therefore fails to support a proper *prime facie* rejection under Section 103(a). Accordingly, Applicants submit that new Claim 34 defines patentable subject matter.

VI. Conclusion

Inasmuch as all of the outstanding issues raised in the Action and the Notice have been addressed, Applicant respectfully submits that the application is in condition for allowance, and request that it be passed to allowance and issue.

Respectfully submitted,



James R. Carnon

Registration No. 35,839

Myers Bigel Sibley & Sajovec, P.A.
Post Office Box 37428
Raleigh, NC 27627
Telephone (919) 854-1400
Facsimile (919) 854-1401

Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 24, 2005.

Signature: _____

Joyce Paoli

Date of Signature: August 24, 2005